



**PLANNING COMMISSION MEETING**  
**July 22, 2013**  
**Meeting Minutes**

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July 22, 2013 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Josserand, Liese, Rasmussen

Staff present: McCullough, Stogsdill, Day, Larkin, Leininger, M. Miller, Ewert

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**MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of June 24 and 26, 2013.

Motioned by Commissioner Josserand, seconded by Commissioner Denney, to approve the June 24 and 26, 2013 Planning Commission minutes.

Motion carried 5-0-1, with Commissioner Britton abstaining.

**COMMITTEE REPORTS**

Receive reports from any committees that met over the past month.

Commissioner Liese said the Metropolitan Planning Organization (MPO) had not met.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- No ex parte.
- No abstentions.

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**ITEM NO. 1 PRELIMINARY PLAT FOR MEADOW LEA ESTATES; 2600 REDBUD LN,  
2620 IOWA ST, 2626 IOWA ST, 2032 W 27<sup>TH</sup> ST (SLD)**

**PP-13-00187:** Consider a one lot Preliminary Plat and variances related to street design standards included in Section 20-810 of the Subdivision Regulations regarding minimum street right-of-way and street termination for Meadow Lea Estates, approximately 3.3 acres, located at 2600 Redbud Lane, 2620 Iowa Street, 2626 Iowa Street, and 2032 W 27<sup>th</sup> Street. Submitted by Landplan Engineering for KMAH LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Brian Sturm, Landplan Engineering, was present for questioning. He said the developer agreed with the staff determination and conditions.

**PUBLIC HEARING on Variance Only**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Rasmussen, seconded by Commissioner Liese, to approve the variance with regard to the minimum right-of-way width for Iowa Street from 150' to 100' with the understanding that the need for a turn lane will be evaluated with the submittal of a site plan and more detailed traffic study may result in a future dedication of right-of-way and or easement, or some combination of both, as applicable. Approval of the variance to allow the termination of Redbud Lane as a dead end street with a turnaround via an access easement subject to the following condition:

- 1. Applicant shall revise the preliminary plat to add a note that states "A public access easement shall be dedicated across the property between Redbud Lane and Iowa Street prior to final approval of a site plan for this property."*

Unanimously approved 6-0.

Motioned by Commissioner Rasmussen, seconded by Commissioner Liese, to approve the Preliminary Plat of KMAH and Lawrence 27<sup>th</sup> Addition and forwarding it to the City Commission for consideration of acceptance of easements and rights-of-way subject to the following condition:

- 1. The plat shall be revised to include the following note: "On July 22, 2013, the Planning Commission approved a variance from right-of-way requirements in Section 20-810(e)(5) and 20-810 (e)(2) of the Subdivision Regulations to allow the replatting of this property with 100 ft of right-of-way currently provided for Iowa Street, with the acknowledgement that a future requirement to provide a turn lane along Iowa Street may require additional dedication of right-of-way and easement as necessary."*

Unanimously approved 6-0.

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**ITEM NO. 2 DEERFIELD WOODS SUBDIVISION; 3320 PETERSON RD (SLD)**

**MS-13-00217:** Deerfield Woods Subdivision No. 9, a minor subdivision/replat of Lot 1 Deerfield woods Subdivision No. 7, located at 3320 Peterson Road. This Minor Subdivision includes a variance request to reduce the right of way for Peterson Road and Kasold Drive from 150' to 100' and a variance to allow sidewalk on only one side of the street. Submitted by Landplan Engineering, for Cheer Pole, LTD, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Brian Sturm, Landplan Engineering, said the company Cheer Pole Limited developed quite a bit of this sector of Lawrence. He said they did not have immediate plans to develop lot 1 and that they were doing the lot split to reduce financing costs for the property.

**PUBLIC HEARING on Variance Only**

Ms. Laura Routh, Community Sidewalk Task Force, was opposed to the variance. She said the community was already behind in pedestrian connectivity and felt commitment should be made to the pedestrian network. She said the lack of a complete network put all pedestrians at risk.

**COMMISSIONER DISCUSSION**

Commissioner Rasmussen asked if the variance was granted would it be permanent or could it be conditioned until such time as lot 1 was developed.

Mr. McCullough said sidewalks were triggered by major development. He said it could be conditioned to provide clear intent.

Commissioner Rasmussen did not feel they should grant a variance in perpetuity. He said this was just a replat to split the property into two pieces and he did not feel it should be a trigger to require sidewalks be installed now. He felt sidewalks should be put in when construction occurs on plat 1 or major construction on lot 2. He felt they should condition it to make it clear this was not a permanent variance.

Commissioner Josserand agreed with Commissioner Rasmussen.

Commissioner Liese asked if staff could relate the Complete Streets campaign to this.

Mr. McCullough said Complete Streets was the concept of as many elements of a street as possible to serve all users. He said one tenant of that was including sidewalks on both sides of the street. He said the Code had changed throughout the years with a mix of standards so some areas of the community were started and finished under different Codes. He said staff looks at each project individually and grants variances on a case by case basis.

Commissioner Liese asked if this would be a violation of Complete Streets.

Mr. McCullough said Complete Streets was not an end all. He said they look at the threshold when retrofitting existing development. He said Complete Streets was valuable and upheld. He stated this was a minor subdivision so in his opinion it did not reach the threshold for requiring the developer to put in sidewalks that were not required when originally platted. He said they were likely to see lot 1

develop with a sidewalk on Sherwood Drive that if it becomes a different ownership and application would only extend to the lot line leaving a gap. He said they should be clear about what the expectation was.

**ACTION TAKEN**

Motioned by Commissioner Rasmussen, seconded by Commissioner Britton, to approve the minor subdivision for Deerfield Woods Subdivision and to include a variance from right-of-way requirements in Section 20-810(e)(5) and 20-811 (c) (1) (i) of the Subdivision Regulations to allow the replatting of this property with 100 ft of right-of-way currently provided for Kasold Drive and Peterson Road and to include a variance to allow replatting without construction of sidewalks on Sherwood Drive and Sterling Drive at the time of replatting but with the condition that sidewalks be installed on the entirety of both Sherwood Drive and Sterling Drive with either any new development on lot 1 or any major redevelopment on lot 2.

Unanimously approved 6-0.

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**ITEM NO. 3 IG TO IL; 5.09 ACRES; 2200 EAST HILLS DR (SMS)**

**Z-13-00191:** Consider a request to rezone approximately 5.09 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 2200 East Hills Drive. Submitted by GHB Investors, property owner of record.

**STAFF PRESENTATION**

Ms. Sheila Stogsdill presented the item.

**APPLICANT PRESENTATION**

Mr. Steve Glass said IL was a very broad category of zoning that allowed a lot of uses and some were not appropriate for this piece of property which was why he submitted a list of uses that should be deleted. He said he had no problem with the 50,000 square foot limit and was fine with the proposed restrictions. He said he did not see a full service grocery store being located at the site but wanted to make sure it would not prevent a quick shop type facility. He said he was not sure what all retail sales general consisted of. He said he had some concern about the fast order food. He did not have concern about eliminating a self-standing McDonalds or Burger King, for example, but wanted to be able to have a multi-tenant building with a Subway, for example, that might have a pick-up window. He asked that they not exclude that type of use.

Commissioner Liese asked if Mr. Glass saw a distinction between a drive-thru and pick-up window.

Mr. Glass said he was concerned about the phrase "Fast Order Food, Drive-In." He said if they considered Subway a fast order food then he did not want that type of use excluded if located in a multi-tenant type building.

Commissioner Liese said he was not sure there was a way to define that.

Mr. McCullough said the Code does not distinguish them. He said fast order food typically had a pick-up window with drive-thru. He said it could be attached to a larger complex or standalone. He said the only distinction he could give were examples such as Little Caesars or Papa Murphy's where people call ahead and pick it up at a window. He said it may not be a Code distinction but may need to be crafted somehow with conditional zoning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Mr. McCullough said food and beverage was typically a grocery store. He said gas and fuel sales incorporated the convenience store use so the IL District would permit the use of gas and fuel which could include a convenience store. He said striking food and beverage would exclude larger grocery stores not the smaller convenience stores.

Commissioner Josserand asked if access to the property would be off of East Hills Drive.

Ms. Stogsdill said yes, it was already platted that way.

Commissioner Rasmussen inquired about the 50,000 square foot limit. He said last month they recommended changing that requirement and the need to do a retail market study. He inquired about the inconsistency.

Mr. McCullough said it was due to the timing of when this application came in. He said the ordinance for the text amendment would be approved on second reading by City Commission tomorrow. He said this condition was generally to resolve the Code conflict regarding what the Code required when the application was submitted. He said Planning Commission may still want to keep the requirement in terms of what they were trying to do with the property. He said staff did not believe it should become a larger commercial node.

Commissioner Rasmussen inquired about the recommendation to exclude fast order food drive-in. He asked about the differentiation between that and a quick shop. He wondered how they could say a quick shop could be there but not a Sonic.

Mr. McCullough said the exercise staff did was evaluating if they were attempting to maintain an industrial parcel with a few commercial services for the park or were they attempting to open it up to highway traffic.

Commissioner Rasmussen said he did not see a big difference between fast food, drive-thru, and quick shop.

Mr. McCullough said there may not be a big difference. He said staff felt like the convenience store and gas aspect would serve the patrons of the park. He said a fast food restaurant would also do that but that fast food restaurants tends to pull more traffic off the highway, in staffs opinion. He said if they felt strongly that it should serve both the park and highway they should loosen up the uses.

Commissioner Liese said he was concerned that the more they limit this the more the business would have to rely on the local business. He said he would support opening it up for the maximum use.

Mr. McCullough said gas and fuel sales were already permitted in IG today so it would be maintained in IL. He said the fast food drive-in would be a new use in IL.

Commissioner Jossierand said he would support staff's recommendation and said the report did a good job of drawing the line. He felt development on this lot should serve the uses of the business park and Farmland more than attracting people off the highway.

Commissioner Rasmussen asked about access to the Farmland property.

Mr. McCullough said there would be.

Ms. Stogsdill said the City was currently constructing the east/west street that goes through Farmland connecting to the west to the north/south entrance to Farmland, which was the intersection of O'Connell where there was a new traffic signal. She showed the area on the overhead.

Commissioner Liese said a business at that site may need as much support as possible to stay open and he did not know if they could count on Farmland and East Hills Business Park to keep them alive and well. He wondered if it would create the potential for more failure so he did not want to risk doing something for two areas not completely developed yet.

Mr. McCullough said IL was still an Industrial District so it was meant to have the opportunity to develop with less intense industrial uses. He said staff wanted the site to be successful as well. He said there were many categories of use and with the right mix of use could be successful.

Commissioner Liese said he would vote in favor of the rezoning. He said he would also support less conditions if Commissioner Rasmussen felt strongly about that.

Commissioner Britton said he was inclined to support the comments made by Commissioner Liese but that he was hesitant because KDOT had not been involved yet and the implications on traffic were not known. He said if they were going to allow a gas station or a gas station with a Wendy's or Subway, that it would be hard to draw a line after that and say no to a standalone McDonalds, Dollar General, or full grocery store. He wondered what the process would be to involve KDOT in the process.

Mr. McCullough said staff could meet with KDOT and throw out a worst case scenario. He said KDOT would say yes but with improvements. He said a traffic study would advise on what improvements would be needed to the highway to accommodate the new traffic.

Commissioner Britton asked if that was something that could be addressed with a specific proposal.

Mr. McCullough said yes.

Commissioner Britton said he shared the concern about bringing traffic in and off the highway at that intersection but that it was difficult to address that issue at the zoning stage. He said he some faith any traffic issues would be addressed with the proposal. He said he was inclined to support broad uses to allow the property to have all kinds of safely moving traffic in and out.

Commissioner Denney agreed with Commissioner Britton. He asked if the intersection currently had no traffic control other than a stop sign and if there were no plans for anything other than stop sign.

Ms. Stogsdill said that was correct.

Commissioner Culver supported the limitation of 50,000 square feet on commercial so it would not become another commercial node. He felt it could support and compliment other uses in Farmland and the East Hills area. He said he was also concerned about the traffic but that a traffic study created during the site planning stage could address that. He said he could support a motion that would be in alignment with staff's recommendation. He liked the idea of a multi-tenant use building for fast food instead of a standalone building.

Commissioner Liese said the Subway in the gas station on N. 3<sup>rd</sup> Street had a drive-thru and speaker box.

Mr. McCullough said the Code did not distinguish between multi-tenant and standalone. He encouraged them to think about the use itself and its impact to pull off traffic from the highway.

Commissioner Rasmussen said he did not see the difference between fast food and gas station. He said the vehicular traffic going in and out of a gas station would be more than a fast food place that might be busy at just lunch and dinner. He said the Quik Trip at 23<sup>rd</sup> and Haskell was busy at all hours of the day. He did not feel there was justification to exclude fast food drive-thru but allow a gas station at that site.

Mr. McCullough said a gas station was permitted currently. He said staff did not want to create a cluster of uses that would exacerbate the potential traffic issue. He said a gas station with a fast food restaurant could create more traffic pulled off the highway.

Commissioner Rasmussen said there were other uses that would be permitted uses that staff recommended not allowing as a permitted use and the applicant agreed with that.

Ms. Stogsdill said the only use staff suggested striking, in addition to the applicant's suggestions, was the drive-thru. She said all the other struck uses were part of the applicant's original proposal.

Commissioner Rasmussen wondered why gas and fuel sales was not struck.

Ms. Stogsdill said it was currently allowed today. She said staff only looked at the additional uses that the IL District provided in terms of expanding the realm of uses.

Commissioner Rasmussen said this was an opportunity for staff to make recommendations. He said he had a hard time justifying only recommending fast food drive-in to be excluded and not a gas station. He said a gas station could have as big of impact, or more, as a drive-thru fast food.

Ms. Stogsdill said the other component were the gateway arguments. She said part of the consideration was having a standalone fast food restaurant at the entrance to the East Hills Business Park, Farmland Business Park, and Lawrence.

Commissioner Liese said they were working on assumptions that they did not have hard data for. He said they were not addressing that the applicant himself was asking for a certain kind of fast food restaurant be allowed.

Mr. McCullough said the definition of drive-in includes pick up windows.

Commissioner Liese asked Mr. Glass if he could live without a pick up window.

Mr. Glass said he would prefer to have the option of pick up window since he did not know which business would occupy the space.

Commissioner Rasmussen asked if the definition included places like Applebee's where they bring food out to your car.

Mr. McCullough said no. He said that was drive-up not drive-thru and that staff did not interpret it that way. He said Applebee's was a Quality Restaurant which was defined differently in the Code.

#### **ACTION TAKEN**

Motioned by Commissioner Josserand to approve the request to rezone approximately 5.09 acres, from IG (General Industrial) to IL (Limited Industrial), based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. The development shall be limited to no more than 50,000 sq. ft. of commercial (retail) development.
2. The permitted uses of the subject property are restricted to those listed in the staff report (deleted uses highlighted in yellow identified by applicant & highlighted in teal suggested by staff).



The motion died for lack of second motion.

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve rezoning approximately 5.09 acres, from IG (General Industrial) to IL (Limited Industrial), based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. The development shall be limited to no more than 50,000 sq. ft. of commercial (retail) development.
2. The permitted uses of the subject property are restricted to those listed in the staff report (deleted uses highlighted in yellow identified by applicant) [Fast Order Food Drive-In, Food & Beverage and Retail Sales, General will be permitted uses]

Commissioner Britton said it was a good end result. He expressed concern about distinguishing fast food drive-in and gas sales. He felt staff did the right thing in providing different options and identifying things Planning Commission should talk about regarding the rezoning.

Commissioner Josserand asked if the motion would allow the entire category of fast order food drive-in as a use.

Commissioner Liese said yes.

Commissioner Josserand said he would vote against the motion. He said staff did a good job in trying to increase the flexible uses for the property but he was concerned about commercial sprawl. He felt the best use of the property was to serve the population of the area as opposed to creating traffic problems.

Commissioner Denney said anything that helped develop the area was good and felt they should not limit it. He stated whatever business goes there will probably trigger a traffic impact study which would address changes that need to be made to make it safe. He said he would vote in favor of the motion.

Commissioner Liese said he appreciated the options provided by staff.

Commissioner Culver asked if the motion included the uses food, beverage, and retail sales.

Mr. McCullough said yes.

Commissioner Rasmussen said Planning Commission had given City Commission a lot of discussion to think about.

Motion carried 5-1, with Commissioner Josserand voting in opposition.

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**ITEM NO. 4      CONDITIONAL USE PERMIT; PRIVATE LANDING STRIP; 2215 N 500  
(MKM)**

**CUP-13-00193:** Consider a Conditional Use Permit for a private landing strip, located at 2215 N 500 Rd. Submitted by Robert and Angela Murray, property owners of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item. She said one of the conditions was that the Federal Aviation Administration (FAA) would provide a determination. She said the FAA usually provides a determination of no objection or a conditional determination in which they list conditions that must be met.

**APPLICANT PRESENTATION**

Mr. Robert Murray, was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Rasmussen asked if the condition was for a new letter to be obtained from the FAA. He asked about the process.

Ms. Miller said yes. She said the applicant would provide plans to the FAA.

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Rasmussen, to approve the Conditional Use Permit for the private airstrip and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following conditions:

- 1) The provision of a revised Conditional Use Site Plan with the following changes:
  - a. Addition of the following note: "The CUP will expire 10 years from the approval date unless an extension is requested from the County Commission before that date. If the CUP expires, the use of the airstrip will require rezoning or approval of a new CUP."
- 2) Federal Aviation Administration (FAA) determination of 'no objection' or a 'conditional determination' of the airstrip shall be provided to the Planning Office prior to the release of the CUP to the Zoning and Codes Office. Any conditions placed on the airstrip by the FAA must be met prior to release of the CUP to the Zoning and Codes Office.
- 3) Any conditions applied by the FAA in their determination will be conditions of the CUP.

Unanimously approved 6-0.

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**ITEM NO. 5A OS-FP TO RM12-FP; .06 ACRE; 3309 W 31<sup>ST</sup> ST (MKM)**

**Z-13-00199:** Consider a request to rezone approximately .06 acre from OS-FP (Open Space with Floodplain Management Regulations Overlay) District to RM12-FP (Multi-Dwelling Residential with Floodplain Management Regulations Overlay) District, located at 3309 W 31<sup>st</sup> St. Submitted by Grob Engineering Services, for Kansas District of the Wesleyan Church, property owner of record.

**ITEM NO. 5B RM12 TO RM12; 16.06 ACRES; 3309 W 31<sup>ST</sup> ST (MKM)**

**Z-13-00249:** Consider a request to rezone approximately 16.06 acres located at 3309 W 31<sup>st</sup> St from RM12 (Multi-Dwelling Residential) District to RM12 (Multi-Dwelling Residential) District to revise the condition which limits maximum density to 6 dwelling units per acre to 9 dwelling units per acre. Submitted by Grob Engineering Services, for Kansas District of the Wesleyan Church, property owner of record.

**ITEM NO. 5C RM12-FP TO RM12-FP; 6.39 ACRES; 3309 W 31<sup>ST</sup> ST (MKM)**

**Z-13-00250:** Consider a request to rezone approximately 6.39 acres located at 3309 W 31<sup>st</sup> St from RM12-FP (Multi-Dwelling Residential with Floodplain Management Regulations Overlay) District to RM12-FP (Multi-Dwelling Residential with Floodplain Management Regulations Overlay) District to revise the condition which limits maximum density to 6 dwelling units per acre to 9 dwelling units per acre. Submitted by Grob Engineering Services, for Kansas District of the Wesleyan Church, property owner of record.

**ITEM NO. 5D PRELIMINARY PLAT FOR YANKEE TANK ESTATES; 3309 W 31<sup>ST</sup> ST (MKM)**

**PP-13-00195:** Consider a Preliminary Plat for Yankee Tank Estates, approximately 35.76 acres located at 3309 W 31<sup>st</sup> St and associated variance from right-of-way width requirement. Submitted by Grob Engineering Services, for Kansas District of the Wesleyan Church, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented items 5A-5D together.

**APPLICANT PRESENTATION**

Mr. Dean Grob, Grob Engineering Services, was present for questioning. He stated the density calculations included a large open space. He said the church dedicated additional right-of-way to the City at no cost.

Commissioner Josserand asked if the church owned the three lots to the north of the duplex development.

Mr. Grob said no. He stated the one lot property directly east of the church was in the residential area. He pointed on the overhead to the property the church owned.

Commissioner Josserand asked if the church intended to develop the property.

Mr. Grob said there was a contract purchaser of the property.

Commissioner Josserand inquired about the density.

Mr. Grob said in developing the area with the original annexation they tried to keep it at 6 units per acre to optimize the residential development while still maintaining the green open space. He said the church wanted to maximize the site for present and future development.

Commissioner Josserand asked if these would be 2-story duplexes.

Mr. Grob said yes.

### **PUBLIC HEARING**

No public comment.

### **COMMISSION DISCUSSION**

Commissioner Britton inquired about the open space area on the southwestern portion.

Ms. Miller said it was not currently developable because it would be placed in a tract which could only be developed with certain uses, such as a gazebo.

Commissioner Britton said he wanted to be sure the open space was kept in perpetuity. He inquired about the density calculation based on developable area.

Ms. Miller said the open space was included for the overall density.

Mr. McCullough said RM12 allowed more density. He said at the time staff did this the plat application had not been submitted so it was unknown how it would be used.

Commissioner Josserand asked if the zoning would be RM12 for lot 1 east of the church lot.

Mr. McCullough said yes.

Commissioner Josserand asked what could be built on it.

Mr. McCullough said it could have a small apartment complex. He said it would be restricted to the size of the lot.

Mr. Grob said the lot was included in the 9 du/acre figure.

Mr. McCullough said it was not in addition to.

### **ACTION TAKEN on 5A**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the rezoning request for approximately .06 acres OS-FP District to RM12-FP District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following condition:

Maximum density is restricted to no more than 9 dwelling units per acre.

Unanimously approved 6-0.

### **ACTION TAKEN on 5B**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the rezoning request for approximately 13.06 acres from the RM12 District to the RM12 District with revised condition and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following revised condition:

Maximum density is restricted to no more than 9 dwelling units per acre.

Unanimously approved 6-0.

#### **ACTION TAKEN on 5C**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the rezoning request for approximately 6.39 acres from the RM12-FP District to the RM12-FP District with revised condition and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following revised condition:

Maximum density is restricted to no more than 9 dwelling units per acre

Unanimously approved 6-0.

#### **ACTION TAKEN on 5D**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the variance requested from Section 20-810(e)(5) to allow the right-of-way for W 31<sup>st</sup> Street to remain at its current width in this location, and to approve the Yankee Tank Estates Addition Preliminary Plat subject to the following conditions:

1. Provision of a revised plat with the following notes added:
  - a) "The property owner shall install a 5 ft wide sidewalk along the improved portion of E 1200 Road with the site-planning/development of the church property."
  - b) "MEBOs are to be determined with the drainage study and shall be noted on the plat."
2. Approval of the preliminary plat is contingent upon approval of the rezoning requests Z-13-00199 (OS-FP to RM12-FP) and Z-13-00249 (RM12 to RM12 with revised condition) and Z-13-00250 (RM12-FP to RM12-FP with revised condition).
3. A dedicated westbound left-turn lane with 50 ft of storage on W 31<sup>st</sup> Street at the Atchison Avenue intersection shall be provided as part of the public improvements.

Unanimously approved 6-0.

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**ITEM NO. 6 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; ACCESSORY DWELLING UNIT (MJL)**

**TA-13-00106:** Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 (Single-Dwelling Residential) District. *Deferred by Planning Commission on 6/26/13.*

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

**PUBLIC HEARING**

Ms. Cille King, League of Women Voters, expressed concern about the definition of owner occupancy in the Code regarding Accessory Dwelling Units (ADU). She said the original concept of ADU's was to aid families that owned and lived in single-family homes that needed living space for elder relatives. She said this was later expanded in the Development Code to include expanded living space to encourage owner occupancy. She said homeowners who live in their home provide stability to a neighborhood. She said the wording "other than a natural person" opens up for the opportunity for absentee owners. She stated Accessory Dwelling Units were a privilege, not a right. She suggested two definitions of owner occupancy.

Ms. Laura Routh, Lawrence Association of Neighborhoods, objected any amendment or language that allowed corporations or investment interests to use the Text Amendment as proposed as a loophole for the creation of rental housing in RS Districts. She asked for a show of hands from the audience of those opposed to the Text Amendment as proposed.

Mr. Jim O'Malley wondered if there was a rush to extend Accessory Dwelling Units (ADU) to RS5 Districts. He said there had not been demand for it so far and that the people who requested the amendment said they didn't plan to put in an ADU but rather an office instead. He said Old West Lawrence was already dense and was not a good idea to add more density that close to the University. He said it made no sense to allow corporate ownership of homes with ADU's because they were intended for living breathing homeowners who live on the property. He suggested the language 'only natural persons may be owners for purposes of this section.' He felt the amendment was too vague and open to sham transactions.

Mr. John Nitcher asked what "principal" meant.

Mr. Randy Larkin, staff attorney, said it would be someone on the board of directors of a corporation, a member of LLC, or someone who had ownership stake in it.

Mr. Nitcher said he would be okay with someone starting out as the owner of record of a property and creating a living trust but that a corporation was totally different and should be excluded. He said if the owner was not a natural person than the owner living in either the principal dwelling unit or Accessory Dwelling Unit must petition the City for permission to occupy the unit and demonstrate the occupancy was consistent with the purpose statement of 20-534(1)(iv).

Ms. Candice Davis said Accessory Dwelling Units (ADU) were allowed in single-family neighborhoods but only included one person. She said rental property in a single-family neighborhood could house three people plus the additional one person in the ADU, which would equal four people. She said four unrelated people was similar to multi-family. She believed the lack of rental inspections in multi-family neighborhoods meant there were a lot of houses and units available but not in very good

shape. She said the rental inspection program may help. She felt single-family neighborhoods were at risk for more rentals due to the stock being in better shape than multi-family areas.

Ms. Marci Francisco supported the interest of being as specific as possible in the Code about addressing the issue because it would eventually affect how Accessory Dwelling Units were implemented in multi-family districts.

Ms. Tresa Hill said single-family meant one family. She said to allow Accessory Dwelling Units for a non-family member meant a second unit, which meant it was no longer single-family zoning, it was multi-family zoning. She said to allow multiple units meant there was no more single-family zoning throughout Lawrence. She felt they should take the proposal off the table and never consider it again.

Ms. Jeanne Pees, Sunset Hills Neighborhood Association, opposed the language. She felt Lawrence needed to maintain the integrity of single-family neighborhoods.

Ms. Karen Kressin opposed extending Accessory Dwelling Units (ADU) to the RS5 District. She said the ADU concept bothered her because it could be seen as a duplex. She said the principal provided a loophole for non-human owners. She said it also did not require the removal of the unit when the need was gone or the house was sold. She felt they should postpone the item to meet with stakeholders and neighborhoods to discuss language.

Commissioner Rasmussen said he had heard two sides from the public; that some were okay with an accessory dwelling unit but that they did not want corporations to be able to own them; and others who did not want any accessory dwelling units whatsoever in RS5. He polled the audience to find out how many people there were for each.

Commissioner Rasmussen said he thought Mr. Nitcher stated he was okay if it was a living trust but then he raised his hand to indicate he did not want any Accessory Dwelling Units.

Mr. Nitcher said his first preference was that no Accessory Dwelling Units be allowed but if the change was made he wanted it to be limited to owner occupied.

Commissioner Denney said he thought he heard some audience members say they were okay with Accessory Dwelling Units as is but not within the RS5 District.

Mr. O'Malley said he did not want Accessory Dwelling Units extended to the RS5 District.

Commissioner Josserand asked Mr. Nitcher about his thoughts on other legal entities.

Mr. Nitcher said he had same objection.

Commissioner Josserand said a lot of couples use a living trust as a title holding vehicle, which should be fairly easy to define.

Mr. Nitcher agreed and said there would be a warranty deed or quick claim deed from the human beings to the trust.

Commissioner Josserand said they ought to be able to allow that kind of use while tacking down potential sham transactions from other entities.

Mr. Nitcher said the language suggested tonight regarding principal was problematic.

Commissioner Josserand concurred.

### **COMMISSION DISCUSSION**

Commissioner Josserand asked staff to respond to the public comment regarding single-family having an accessory dwelling with one person.

Mr. McCullough said the Code reads that the total combined number of residents in both the principal residence and Accessory Dwelling Unit was the occupancy limit plus one. He said that distinguished it from multi-family or duplex which gets occupancy limit in both.

Commissioner Josserand said that would just be in the RS category currently.

Mr. McCullough said yes, four unrelated people were allowed in the combined units within the RS Districts that currently allow Accessory Dwelling Units (ADU). He said ADU's intensify the district but do not double it as a duplex configuration would.

Commissioner Josserand asked if this change was adopted would it change what he said relative to RS7.

Mr. McCullough said no, not in terms of the occupancy limits.

Commissioner Rasmussen stated there were currently about 14 Accessory Dwelling Units city-wide in the six other zoning districts. He felt they may be worrying about a problem that may not exist. He said other than the applicant there had not been anyone in support of it. He said he would rather deny it because he did not see the benefit of crafting language to address a problem that may or may not occur in a zone where the vast majority of people were opposed.

Ms. Leininger said a current rezoning application was on hold for an applicant who was looking to rezone out of RS5 in order to add an Accessory Dwelling Unit (ADU). She said that applicant was waiting on this Text Amendment and that she had others inquiries about adding ADU's in RS5.

Commissioner Denney said that would still leave the ownership issue in question in other RS Districts.

Commissioner Rasmussen did not feel they should go down this road. He stated there may be legitimate reasons to have a corporation. He felt they were trying to solve a problem that may not exist.

Mr. Larkin said the definition of owner applies throughout the entire Code and that a change to 20-1701 could have unintended consequences.

Commissioner Josserand felt the risk was bigger with Accessory Dwelling Units in the Oread neighborhood. He said he would support not doing anything with the Text Amendment and felt the definition of principal was a big loop hole. He felt there was potential for abuse through corporations, limited partnerships, etc. and felt there was a way to tighten this. He wondered about the enforceability. He thought maybe the best thing to do was to do nothing and deny the Text Amendment at this point in time.



Commissioner Liese said he was absent from last month's meeting and he wondered what the rationale was for having staff work so hard on the rewording.

Mr. McCullough said it was a product of last month's meeting that someone had concern that owners would allow corporations and that corporate entities would buy property and turn it into rental property versus owner occupied. He said some of the Commissioners thought it would be beneficial that a natural person would form a corporation for protection and still have the benefit of an Accessory Dwelling Unit use. He said Planning Commission tasked staff to attempt to get at the issue with language.

Commissioner Liese inquired about their options for voting. He asked what would happen if they had no recommendation to City Commission.

Mr. McCullough said all the options would be laid out for City Commission to decide. He said if denied they would be left with the current Code in all the RS Districts except RS5. He said the current Code definition of owner meant a corporation could own the property with no more than four unrelated total persons.

Commissioner Josserand said they could make a motion to deny.

Commissioner Liese said he would not vote in favor of the Text Amendment.

Commissioner Rasmussen asked if Planning Commission recommended denial could City Commission override that recommendation.

Mr. McCullough said yes.

Commissioner Denney said the way he read it was that it didn't change it, but rather extended Accessory Dwelling Units to RS5 and the original proposal didn't change any language about owner. He said the concern brought up by public last month was more with the definition of owner and staffs purpose this time was to tighten that definition rather than broaden it. He said the definition of owner would still exist even if they denied the request for RS5.

Mr. McCullough said there was no practicing issue or harm out there that they were trying to solve. He said there may be a theoretical loophole but that it was not seen in practice. He said Planning Commission could modify the definition owner if they chose to do so.

Commissioner Britton said if they do not extend Accessory Dwelling Units to RS5 the definition of owner would not really be an issue because it was not so inherently incompatible with zonings of RS7 and above. He asked Ms. Leininger about the applicant she mentioned who was seeking to be rezoned to RS7. He wondered if that was a viable option for accommodate people.

Ms. Leininger said she did not think it would be something that staff would recommend to be used frequently. She said the situation she referenced was an option that staff outlined for the applicant. She said it would depend on the situation and if the applicant was near other zoning districts.

Commissioner Rasmussen said if there was support for Accessory Dwelling Units in RS5 he would rather have Accessory Dwelling Units allowed through a Special Use Permit where conditions could be placed to ensure the owner was living there.

Commissioner Liese asked if the greatest preponderance of RS5 was in Old West Lawrence.

Ms. Leininger said there were some in Pinckney, East Lawrence, and Barker.

Commissioner Liese said he would want to send a strong message by denying the item.

Commissioner Culver apologized to staff for sending them down the path of defining owner. He said it could create unintended consequences by changing the definition. He said he would support a motion for denial because he did not see overwhelming support or justification.

Commissioner Josserand also apologized to staff. He said if they wanted to look at it in the future he would volunteer to serve on a sub-committee to draft language.

**ACTION TAKEN**

Motioned by Commissioner Josserand, seconded by Commissioner Liese, to deny Text Amendment, TA-13-00106, to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 District.

Commissioner Britton said there could be unintended consequences by changing the definition of owner so they should not go lightly on the issue.

Motion carried 6-0.

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**MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

Commissioner Liese said several Planning Commissioners had talked informally about possibly holding a mid-year half-day retreat in January.

Commissioner Culver said it could replace the January Mid-Month meeting.

Commissioner Denney said he would not be present for the August Mid-Month meeting or the August Planning Commission meetings.

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**ADJOURN 9:38pm**